

The Honorable Mary Hartley
Arizona State Senate September 15, 1995
Re: I95-010 (R95-015)

This letter responds to your request for an opinion regarding whether the Arizona Public Records Law (Arizona Revised Statutes Annotated ("A.R.S.") §§ 39-121 through -122) and Open Meeting Law (A.R.S. §§ 38-431 through -431.09) apply to charter schools. We conclude that these laws do apply to charter schools. In arriving at our conclusion, we find that charter schools are "public bodies" for purposes of the Public Records and Open Meeting Laws, and that the exception for charter schools from certain statutes does not exempt charter schools from either the Public Records or Open Meeting Laws.

Charter Schools

The Legislature has defined a charter school to be a "public school."(1) A.R.S. § 15-101(3). A charter school is established by contract between a sponsor (which may be a school district governing board, the State Board of Education, or the State Board for Charter Schools) and a public body, private person, or private organization. A.R.S. §§ 15-101(3), -183(B). The purpose of a charter school is to provide both a learning environment that will improve pupil achievement and additional academic choices for parents and pupils. A.R.S. § 15-181(A). Generally, charter schools must enroll all eligible pupils, unless the number of applicants exceeds the capacity of the program. A.R.S. § 15-184(A).

The State requires that the charter of each charter school must ensure that the school complies with federal, state, and local statutes and rules relating to health, safety, civil rights, and insurance; is nonsectarian in its programs, admission policies, employment practices, and all other operations; provides a comprehensive program of instruction; designs a method to measure pupil progress toward the pupil outcomes adopted by the State Board of Education; is subject to the same financial requirements as school districts (including the uniform system of financial records, procurement rules, and audit requirements), subject to exceptions determined necessary by the charter school's sponsor; and complies with all federal and state laws relating to the education of children with disabilities in the same manner as a school district. A.R.S. § 15-183(E)(1)-(4), (6)-(7). The charter of a charter school must also establish a governing body that is responsible for the policy and operational decisions of the school, and describe the school's personnel policies and qualifications, as well as the method of school governance and the specific roles and duties of the charter school. A.R.S. § 15-183(E)(8), (F).

The charter school's public sponsor must be involved in overseeing the school. For example, the charter may be amended only with the approval of the sponsor. A.R.S. § 15-183(G). Also, the charter is limited in term to five years and may be renewed (or not) at the discretion of the sponsor. A.R.S. § 15-183(I). Furthermore, a sponsor may revoke a charter at any time if the charter school breaches one or more provisions of its charter. *Id.*

To provide financial support, the Legislature authorized public funding for qualifying charter schools. A.R.S. §§ 15-181(B), -185. The amount of tax dollars provided to charter schools is computed either as a per pupil expenditure (if the charter school is sponsored by a school district governing board) or according to a specific formula that includes base support, transportation support, capital outlay revenue limits, and capital levy revenue limits established by statute. A.R.S. § 15-185(A) and (B).

The General Charter School Exception Does Not Apply

In addition to these mandates and authorizations, the Legislature noted that "except as provided in this article and in its charter, [a charter school] is exempt from all statutes and rules relating to schools, governing boards and school districts." A.R.S. § 15-183(E)(5). This exception appears to be directed towards the statutes in Title 15 (Education Code) and rules authorized by Title 15, and is not a sweeping exception from all non-Title 15 statutes and rules that schools must obey, such as criminal laws (for example, charter schools cannot abuse children) and gambling laws (for example, charter schools cannot operate casinos). Because an entity's status as a "public body" for purposes of the Public Records and Open Meeting Laws is determined by the factors established in those laws and not Title 15, we find that the exception in A.R.S. § 15-183(E)(5) does not apply to our inquiry. Thus, we evaluate the applicability of the Public Records and Open Meeting Laws according to the characteristics of charter schools.(2)

Applicability of Arizona's Public Records Law

According to A.R.S. § 39-121, "[p]ublic records and other matters in the office of any officer at all times during office hours shall be open to inspection by any person." (Emphasis added.) Moreover, "[o]fficer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body." A.R.S. § 39-121.01(A)(1) (emphasis added).

Additionally,

"[p]ublic body" means the state, any county, city, town, school district, political subdivision or tax-supported district in the state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by funds from the state or any political subdivision thereof, or expending funds provided by the state or any political subdivision thereof.

A.R.S. § 39-121.01(A)(2).

In this case, charter schools are "public schools" that are sponsored by other public bodies and that receive financial support either from a school district(3) or the State treasurer. A.R.S. §§ 15-101(3), -185. Because charter schools are supported in whole or in part by the State or any political subdivision of the State, they are "public bodies" for purposes of the Public Records Law and the officers (as the term is defined in A.R.S. § 39-121.01(A)(1)) of the charter school are subject to the Public Records Law.

Applicability of Arizona's Open Meeting Law

In answering your question about whether the Open Meeting Law applies to charter schools, we are directed by the Legislature's specific instruction that "any person or entity charged with the interpretations of this article [Open Meeting Law] shall take into account the policy of this article and shall construe any provision of this article in favor of open and public meetings." A.R.S. § 38-431.09. Thus, the Legislature directed that the Open Meeting Law be construed broadly, maximizing public access to the government process.

Under the Open Meeting Law, "[a]ll meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." A.R.S. § 38-431.01(A) (emphasis added). A "public body" as defined in the Open Meeting Law means

the legislature, all boards and commissions of the state or political subdivisions, all multi-member governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.

A.R.S. § 38-431(5) (emphasis added). An institution of the State or political subdivision under A.R.S. § 38-431(5) "connotes an institution created by law as an organic constituent of the state or a political subdivision which functions as a concrete manifestation thereof," while the term "instrumentality" suggests "a means or agency which is a minor part of a larger entity or under the control of a subsuming organization." *Prescott Newspapers, Inc. v. Yavapai Community Hosp. Ass'n*, 163 Ariz. 33, 39, 785 P.2d 1221, 1227 (App. 1989) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY). If an entity is not a "public body" under A.R.S. § 38-431(5), it is not subject to the Open Meeting Law. Ariz. Att'y Gen. Op. I88-055.

In *Prescott Newspapers*, the Arizona Court of Appeals analyzed the concepts of institution and instrumentality used in the Open Meeting Law as they related to a hospital association. The court, in holding that the hospital association in question was not an institution of the State, focused its inquiry on whether the association (1) was a creation of law or a group of private individuals acting consistent with Arizona's statutes governing non-profit corporations; (2) had its powers and duties dictated by statute or rule or by its articles of incorporation, corporate by-laws, and contracts; (3) was formed and operated independent of the State or a political subdivision; and (4) levied taxes or independently funded itself. *Id.* The court also held that the association was not an instrumentality of the State or a political subdivision because the association, although it contracted with the hospital district, was not a part, organ, or subsidiary branch of the district and operationally was not under the district's control. *Id.*

The court also found that the hospital association did not meet the characteristics of a "public" hospital described in *Peterson v. Tucson General Hospital*, 114 Ariz. 66, 559 P.2d 186 (App. 1976). In *Peterson*, the court of appeals characterized a "public" hospital as "an instrumentality of the state, founded and owned in the public interest, supported by public funds, and governed by those deriving their authority from the state." *Id.* at 69, 559 P.2d at 189. The *Prescott Newspapers* court determined that because the hospital association was neither supported by public funds nor governed by those who derive their authority from the State, it was not an instrumentality of a political subdivision under A.R.S. § 38-431(5). *Prescott Newspapers*, 163 Ariz. at 40, 785 P.2d at 1228.

Charter schools, however, have significant public components which the hospital association in *Prescott Newspapers* lacked. For example, charter schools are a unique creation of law that was nonexistent prior to 1994. In the enabling legislation, charter schools are "public" schools that exist solely through their contract with a political subdivision or State sponsor. The State, acting through the sponsor, provides initial authorization, oversight, funding, and sole control of whether to renew a school charter. The Legislature mandates the general components of the charter, school operation, school accountability, school financial requirements, and responsibilities of the school governing body. Because of the amount of general involvement that the State has with charter schools, the public funding of charter schools, and the legislative determination that charter schools are public schools, we conclude that charter schools are a newly-added component of the public education system in Arizona. Therefore, we conclude

that for the purpose of the Open Meeting Law, charter schools are an "institution or instrumentality of the state or political subdivisions." A.R.S. § 38-431(5).

Finally, because each charter school must have a governing body that is responsible for the policy and operational decisions of the school (A.R.S. § 15-183(E)(8)), we find that charter schools operate through a "multi-member" governing body as established in A.R.S. § 38-431(5). Thus, charter schools meet all prerequisites of A.R.S. § 38-431(5) as "public bodies." Accordingly, charter schools are subject to the Open Meeting Law.

Conclusion

We conclude, then, that a charter school is a "public body" under A.R.S. § 39-121.01(A)(2) and an officer of the charter school's governing body is subject to the Public Records Law. We further conclude that a governing body of a charter school is a public body under A.R.S. § 38-431(5) and must comply with the Open Meeting Law.

Sincerely,

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Attorney General

¹ "Public school" means an elementary or secondary school in the United States providing free education for the children of residents of a specified area. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1836 (1993).

² As further support for our conclusion that the exception in A.R.S. § 15-183(E)(5) does not apply to the Public Records and Open Meeting Laws, consider the numerous legislative exceptions to both the Public Records and Open Meeting Laws. See, e.g., A.R.S. § 39-123 (exempting certain peace officer records from the Public Records Law), and A.R.S. § 38-431.08 (enumerating the exceptions to the Open Meeting Law). Here, the Legislature did not provide charter schools a specific exception from the Public Records or Open Meeting Laws by adding a new exception or amending an old exception. When the Legislature identifies one or more items in a class in a statute, it indicates an intent to exclude all items of the same class that are not expressed. *Pima County v. Heinfeld*, 134 Ariz. 133, 654 P.2d 281 (1982). Because charter schools are absent from the list of statutory exceptions to the Public Records and Open Meeting Laws, and because the exemption statutes have not been amended to include charter schools, we conclude that the Legislature intends charter schools to follow these laws if they are otherwise applicable.

³ A school district is a political subdivision of the State. A.R.S. § 15-101(17). A district-sponsored charter school may also receive equalization assistance from the State. See A.R.S. § 15-185(C).

⁴ Whether an entity is a "public body" under other State statutes depends on the definition used in those statutes and upon a factual and legal analysis consistent with the particular statute. The conclusion reached by this Opinion is therefore limited to the Public Records and Open Meeting Laws.

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